



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|------------------------------|------------------------|
| 09/603,601 | 06/26/2000 | James D. Marks | 20759/100G691-US2 | 3416 |
| 7278 | 7590 | 08/07/2007 | | |
| DARBY & DARBY P.C. P.O. BOX 770 Church Street Station New York, NY 10008-0770 | | | EXAMINER RIMELL, SAMUEL G | |
| | | | ART UNIT 2164 | PAPER NUMBER |
| | | | MAIL DATE 08/07/2007 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/603,601

Applicant(s)

MARKS, JAMES D.

Examiner

Sam Rimell

Art Unit

2164

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12-14, 23-35, 51 and 61-68 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-10, 12-14, 23-27, 29-35, 51 and 61-68 is/are allowed.
- 6) ☒ Claim(s) 1-7 and 28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.


SAM RIMELL
PRIMARY EXAMINER

Art Unit: 2164

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by TheBody.com.

Preliminary Note: The applied prior art is a set of screen shots obtained from the web site “The Body.com”. The screen shots were obtained from the website www.archive.org which maintains archives of various web sites. The particular screen shots applied as prior art were archived on March 4, 1998 from the website “The Body.com”. Eight pages of screenshots are provided , numbered 1-8 in the top right corner of each page. Based on either the March 4, 1998 archiving date or the last update time of January 16, 1998 printed on page 1, this prior art is applicable under 35 USC 102(b).

Claim 1: As seen from page 1, The Body.com is an interactive network site on the Internet. Network sites on the Internet are inherently hosted by servers. As seen form pages 4-6, various experts are provided on the site to answer questions from users on various pre-determined subject matter. Examples of the pre-determined subject matter are illustrated on pages 4-5, and include subject matter such as treatment, prevention, legal, mental health, etc. Each individual area of subject matter constitutes a forum. As seen on page 4, some of the experts, such as Judith S. Currier, M.D. appear in two different forums (the forum for “treatment” and the forum for “opportunistic infections”).

As seen from the lower portion of page 6, any given forum can receive two or more questions. Since the mechanism of communication is the Internet, the questions are inherently

Art Unit: 2164

received via servers and routed to the experts. As seen on page 6, each expert has their own unique expert interface in which they list questions for which they have provided an answer, as well as the biography of the expert. Accordingly, each expert interface is unique to each expert.

Questions are posted at the bottom of page 6 and answers to those questions are obtained by clicking the hyperlink describing the question. The posting of the answers on any of the forums are inherently produced having the expert write the answer to the question and issuing a command to post the answer on the forum, otherwise, neither the questions nor the answers would appear. This occurs for every question and every answer within the entire website.

Payments are provide by third parties, as shown on page 7 by the sponsors who sponsor the website and also provide advertising to the website (page 2). Sponsorship directly indicates financial support to operate the website. Each of the sponsors are third parties which provide products and/or services.

Claim 2: In the context of a method, what a payment “represents” carries no patentable weight. Nonetheless, it is clear from a review of page 7 that sponsoring corporations provide financial support to render the website operational, and thus accessible to users who post questions.

Claim 3: Each of the third parties illustrated on page 7 are well known drug manufacturers. The alternatives of medical insurance providers and health maintenance organizations are optional, since the claim is only limited one of the options.

Claim 4: As seen on page 2, the websites provide links to the third parties who sponsor the website. One of the links (“Chiron..Visit Signals Newsletter online”) is an invitation to contact a newsletter associated with one of the third parties. If a web user views any of the

Art Unit: 2164

websites associated with a third party, the third party server will obtain the IP address of the contacting computer, which is transmitted personal information.

Claim 5: An IP address is identification information.

Claim 6: If a user does not contact any of third parties by clicking on their links, then their IP address would not reach any server associated with the third party.

Claim 7: Any of the experts listed on pages 4-5 can be seen as peer reviewers since the claim draws no distinction between an expert and a peer reviewer. Accordingly, any question routed to an expert corresponds to a question routed to a peer reviewer.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over TheBody.com in view of Official Notice.

Claim 28: As seen from page 1, The Body.com is an interactive network site on the Internet. Network sites on the Internet are inherently hosted by servers. As seen from pages 4-6, various experts are provided on the site to answer questions from users on various pre-determined subject matter. Examples of the pre-determined subject matter are illustrated on pages 4-5, and include subject matter such as treatment, prevention, legal, mental health, etc. Each individual area of subject matter constitutes a forum. As seen on page 4, some of the experts, such as Judith S. Carrier, M.D. appear in two different forums (the forum for "treatment" and the forum for "opportunistic infections").

Art Unit: 2164

As seen from the lower portion of page 6, any given forum can receive two or more questions. Since the mechanism of communication is the Internet, the questions are inherently received via servers and routed to the experts. As seen on page 6, each expert has their own unique expert interface in which they list questions for which they have provided an answer, as well as the biography of the expert. Accordingly, each expert interface is unique to each expert.

Questions are posted at the bottom of page 6 and answers to those questions are obtained by clicking the hyperlink describing the question. The posting of the answers on any of the forums are inherently produced having the expert write the answer to the question and issuing a command to post the answer on the forum, otherwise, neither the questions nor the answers would appear. This occurs for every question and every answer within the entire website.

Payments are provide by third parties, as shown on page 7 by the sponsors who sponsor the website and also provide advertising to the website (page 2). Sponsorship directly indicates financial support to operate the website. Each of the sponsors are third parties which provide products and/or services.

Banner advertisements are illustrated on page 2.

Examiner takes Official Notice that it was well known in the art at the time of invention to monitor Internet web traffic and base advertising rates on the degree of traffic (more traffic→higher rates) as a technique for maximizing revenue from the advertising. It would have been obvious to one of ordinary skill in the art to modify the The Body.com to incorporate such a technique for the purpose of maximizing revenue from its advertising displays.

Claims 8-10, 12-14, 23-27, 29-35, 51 and 61-68 are allowed.

Art Unit: 2164

Remarks

Applicant's amendments have overcome all previous grounds of rejection. The grounds of rejection applied in this action are new grounds of rejection necessitated by amendments, and accordingly, must be made final. However, interviews after this office action will be permitted.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Sam Rimell at telephone number (571) 272-4084.



Sam Rimell
Primary Examiner
Art Unit 2164